

**DRAFT**

# **Staffordshire County Council Procurement Regulations**

**DRAFT 02/06/17**

Approved by the Audit Committee on **[26 June]** 2017

## Contents

No.	SECTIONS	PAGE
	<b>Threshold Ladder.....</b>	<b>4</b>
<b>A</b>	<b>Aims, Applicability and Governance.....</b>	<b>5</b>
A1	Aims	5
A2	Applicability	5
A3	Governance	5
A4	Authority to Procure arrangements with leases, hire, rental etc	6
<b>B</b>	<b>Pre-Procurement Activities.....</b>	<b>6</b>
B1	Appointment of Third Parties to act on behalf of the Council	6
B2	Sourcing Strategy	6
B3	Threshold Ladder	7
<b>C</b>	<b>Overall Considerations.....</b>	<b>7</b>
C1	Contracts Register	7
C2	Honesty and Conflicts of Interest	8
C3	Contract Duration and Value	8
C4	Collaborative Procurement	8
C5	Framework Agreements	9
C6	Approved Lists	9
C7	Concession Contracts	10
C8	Procurement Tool Kit	10
C9	Purchasing / Procurement Cards	10
C10	Community Right to Challenge	10
C11	Disposal of Council Assets	11
C12	Insurance	11
<b>D</b>	<b>Procurement Process.....</b>	<b>11</b>
D1	General	11
D2	Sustainable Procurement (Social & Environmental Value)	11
D3	Employment issues and TUPE	12
D4	Advertising	13
D5	Pre-Qualification	13
D6	Invitation to Tender ('ITT')	13
D7	Contract Terms and Conditions	13
D8	Issuing Requests, Receiving and Opening Quotations and Tenders	14
D9	Emailed Quotations	14
D10	Electronic Tendering and Auctions	14
D11	Late Tenders or Partial Receipt of Tenders	15
D12	Evaluating Quotations and Tenders	15
D13	Approval to Award Contracts for Works, Supplies or Services	15

D14	Contract Monitoring and Management	16
D15	Tender File	16
D16	Transferring Contracts	17
D17	Contract Variation, Extension and Termination	17
E	Public Contracts Regulations / EU Procurement Directives.....	17
F	Exemptions and Exceptions.....	18
F1	General	18
F2	Exemptions - Circumstances where these Regulations do not apply	18
F3	Exceptions from these Regulations for Contract spends up to the EU Thresholds	18
F4	Non-Compliance of the Public Contracts and Concession Contracts Regulations	19
F5	Applying for / Authorising and Reporting an Exception	19
F6	Recording of Exceptions	20
1	Annex 1 – Glossary of Terms.....	21

**Notes:**

1. Any capitalised wording within these Regulations is further defined within the Glossary of Terms.
2. These Regulations apply to all quotation and tender processes commenced from and including *(insert date of approval)*.
3. Quotation and tender processes commenced on or before *(insert the date before approval)* will continue under the previous Council Procurement Regulations approved by Audit Committee on 24<sup>th</sup> March 2011.

**Threshold Ladder** (All Contract spends exclude VAT)

Threshold	Process for Procuring	
Contract values up to £500	<p>Award to provider without formal procurement process.</p> <p>Use a Procurement / Purchasing Card (see section C9).</p> <p>Contract on the providers own terms.</p>	
Contract values at and over £500 up to <b>£25,000</b> (the <b>Council Advertising Threshold</b> )	<p>Obtain 3 written quotations.</p> <p>Consider a Procurement / Purchasing Card for the lower value spends in this range.</p> <p>Contract on Council model Terms and Conditions where possible; contract on provider's terms and conditions where there is a business need and any associated risks have been considered.</p>	<p>The Procurement Tool Kit (see section C8) is to be used specifically for</p> <ul style="list-style-type: none"> <li>• Advice on whether a procurement is required at all</li> </ul>
Contract values at and over the <b>Council Advertising Threshold</b> up to EU Thresholds limits (see below for these)	<p>Publically advertised procurement.</p> <p>Consult a Procurement Advisor to manage the procurement on the electronic tendering system.</p> <p>Consult a Procurement Advisor before embarking on <u>any</u> procurement at and over £100,000.</p> <p>Contracts Register to be populated.</p> <p>Contracts Finder will be used for posting both adverts and award notices for spends £25,000 and over.</p> <p>Use Council model Terms and Conditions.</p>	<ul style="list-style-type: none"> <li>• Developing a Sourcing Strategy</li> <li>• Advising on Contract terms and conditions and procurement documentation</li> <li>• Preparing, issuing and evaluating quotations and tenders</li> <li>• Issuing quotations and tenders</li> </ul>
Contract values at, and over, the <b>EU Thresholds</b>	<p>In accordance with the Public Contracts Regulations for: -</p> <ul style="list-style-type: none"> <li>• Supplies and Services over £164,176*</li> <li>• Light Touch Regime contracts over £589,148*</li> <li>• Works over £4,104,394*</li> </ul> <p>In accordance with the Concession Contracts Regulations for: -</p> <ul style="list-style-type: none"> <li>• Works/Services over £4,104,394</li> </ul> <p>Consult a Procurement Advisor on <u>all</u> procurements over the EU Thresholds.</p> <p>Use Council model Contract Terms and Conditions. *refreshed every 2 years from January 2016</p>	

## **AIMS, APPLICABILITY AND GOVERNANCE**

### **A1 Aims**

A1.1 These Regulations have the following main aims:

- to get best value / value for money, so that the Council may in turn offer better and more cost-effective services to the public;
- to keep to the obligations that govern spending public money;
- to enable visibility of Council spend data;
- to ensure the Council allows freedom of opportunity to trade, compete, be open, honest, fair and transparent in our procurements;
- to attract continuous improvement in our processes;
- to contribute to a healthy, happy and prosperous Staffordshire.

A1.2 There are legal and commercial consequences suffered by the Council as a result of failing to follow these Regulations.

### **A2 Applicability**

A2.1 These Regulations apply

- to all Contracts for the procurement of all Works, Supplies or Services by the Council, including, ad-hoc, one-off requirements
- to Officers of the Council undertaking any procurement activity on behalf of the Council
- to any Contract that results in the Council making a payment and/or where a service is being provided for the Council resulting in income being generated for the Council
- where the Council is acting as the lead organisation in a partnership or other joint procurement arrangement
- to the selling / disposing of our assets

### **A3 Governance**

A3.1 These Regulations are made under Section 135 of the Local Government Act 1972.

A3.2 The Council will review these Regulations periodically and as required by changes to legislation.

A3.3 These Regulations enable a separate set of Procurement Instructions which represent the practice to be followed when conducting a procurement process.

- A3.4 The Head of Commercial may from time-to-time issue new and/or revise the Procurement Instructions setting out the practice to be followed when using these Regulations.
- A3.5 A failure to follow these Regulations by any Officer may result in disciplinary action being taken against the Officer.
- A3.6 Officers are directed to their Code of Conduct, the Whistleblowing Policy and the Integrity Policy should they become aware of a non-compliance or breach of these Regulations by other Officers.
- A3.7 If in any doubt about how these Regulations apply, Officers must always check with a Procurement Advisor.

#### **A4 Authority to procure arrangements with leases, hire, rental etc**

- A4.1 An Officer will not, without approval from the Head of Commercial, enter into a Contract for a provider to supply Supplies or Services under any operating lease, hire, rental or any other credit arrangements.

### **B PRE-PROCUREMENT ACTIVITIES**

#### **B1 Appointment of Third Parties to act on behalf of the Council**

- B1.1 The appointment of any third party to be responsible to the Council for preparing or supervising of a Contract on behalf of the Council (including contributing/leading the procurement process) must be prepared by a Procurement Advisor under a formal set of third party appointment terms.
- B1.2 All decisions made by any third party regarding a Council procurement must follow these Regulations.

#### **B2 Sourcing Strategy**

- B2.1 **Consult a Procurement Advisor before embarking on any procurement at and over £100,000.**
- B2.2 For Contract values at and over £100,000 written approval of the Sourcing Strategy is to be sought from a Procurement Advisor.
- B2.3 Whenever Officers buy Works, Supplies or Services for the Council, they must always act to promote competition and to achieve best value / value for money.
- B2.4 Prior to any procurement at or over £500 Officers must rationalise in a written Sourcing Strategy the procurement route by considering the following specifically in the order presented: -
- B2.4.1 Not buying the Goods, having the Works done or receiving the Services at all;
  - B2.4.2 By securing the provision of the Works, Supplies or

Services in-house;

- B2.4.3 By getting someone else to provide the ongoing Works, Supplies or Services (e.g. using the voluntary sector or via another Local Authority);
- B2.4.4 By providing the Works, Supplies or Services via an existing Council Framework Agreement, Dynamic Purchasing System, Contract or similar arrangement;
- B2.4.5 By providing the Works, Supplies or Services from an already pre-procured Framework Agreement or Dynamic Purchasing System or Contract provided by an external public sector body or from a Central Purchasing Body;
- B2.4.6 By outsourcing/buying the provision of the Works, Supplies or Services through collaborative procurement with another local authority/partner, to/from an external provider on the open market by establishing a Contract;
- B2.4.7 By outsourcing/buying (via quotes or tenders) the Works, Supplies or Services to/from an external provider on the open market by establishing a bespoke Council Contract.

B2.5 Only a Procurement Advisor can grant permission to disregard any of the steps within B2.4.

B2.6 It is important that Officers appraise the risk, value, provider activity, market pressures and all internal and external influencing forces associated with their procurement. Value may not always be proportional to risk. Consult a Procurement Advisor if in any doubt.

### **B3 Threshold Ladder**

B3.1 The Threshold Ladder is presented at the front of these Regulations, and is to be read in conjunction with these Regulations and the Sourcing Strategy options outlined in the Procurement Tool Kit. The Threshold Ladder clearly presents the procurement processes required for the various procured contract values.

## **C OVERALL CONSIDERATIONS**

### **C1 Contracts Register**

C1.1 A Contracts Register will be held by the Commercial Team which provides a central point for Contract information.

C1.2 The Contracts Register provides full visibility of existing Contracts (to avoid any duplication) and is also a legal record of data as requested by the Transparency Code.

C1.3 Every Contract awarded by the Council that has a total aggregated value in excess of the Council Advertising Threshold will be recorded in the Council Contracts Register.

- C1.4 It is the responsibility of the Officer (whoever is managing the procurement) to ensure that the Contracts Register is populated and updated on an ongoing basis as a result of any change in the Contract circumstance. Refer to the Procurement Tool Kit for the full process.

## **C2 Honesty and Conflicts of Interest**

- C2.1 In all their dealings, Members and Officers shall preserve the highest standards of honesty, integrity, impartiality and objectivity. This includes compliance with Bribery Act 2010, Codes of Conduct and Section 117 of the Local Government Act 1972 (as may be amended from time-to-time) as a minimum.
- C2.2 Officers who are deemed 'Key Influencers' to a procurement shall complete and sign a Declaration of Interest and Confidentiality Undertaking document (Procurement Instruction) for each procurement project with a Contract spend over the relevant EU Threshold.
- C2.3 Officers should not accept any gifts or hospitality from anyone tendering for a procurement/Contract they are involved with, or, from any current provider. Officers are reminded of the instructions on the intranet under Gifts and Hospitality and within the Constitution.

## **C3 Contract Duration and Value**

- C3.1 The total value of a Contract is the total estimated expenditure (excl. VAT) for the duration of the Contract including any extension options/periods.
- C3.2 Contracts cannot be divided (disaggregated) into separate Contracts with the intention of avoiding the application of the Public Contracts Regulations or these Regulations.
- C3.3 A Procurement Advisor must be consulted if a Contract is to last longer than 4 years including all extension periods.
- C3.4 Officers are required to consider and include (aggregate) the value of similar requirements in other parts of the Council when calculating a Contract value. The total aggregated value means the total value of similar purchased Works, Supplies or Services over the duration of a Contract.
- C3.5 If the Contract is for buying a single item, which is not related to buying other items, the Contract is worth the price, or estimated price, referred to in that Contract.
- C3.6 If the Contract is for buying a related group of items, the Contract is worth the total price, or estimated total price, of the group.

## **C4 Collaborative Procurement**

- C4.1 Where the Council takes the lead procurement role in a Collaborative Procurement, these Regulations will apply to each procurement process carried out under the collaborative arrangement.



- C4.2 Where another public sector organisation takes the lead procurement role, its contract standing orders, or equivalent, will apply.
- C4.3 Where the Council enters into formal joint buying or consortia purchasing arrangements, the related Contract and procurement strategy must protect the Council to a level proportionate to the risk involved, whilst at the same time providing the basis for a partnering approach and delivery of best value / value for money.
- C4.4 A Procurement Advisor must be consulted prior to agreeing to enter into collaborative procurements.

## **C5 Framework Agreements**

- C5.1 Framework Agreements are agreements that allow Officers to place orders with selected providers on pre-agreed terms.

### **Joining another Contracting Authority's Existing Framework Agreement**

- C5.2 Where the Council seeks to join an existing Framework Agreement then a due diligence exercise should be undertaken to ensure that the Framework Agreement was properly procured in accordance with the relevant legislation and with particular reference to the ability of the Council to access the Framework Agreement under the terms of the original advertisement.
- C5.3 A Procurement Advisor must be consulted before buying from a Framework Agreement that has been procured by another Contracting Authority.
- C5.4 Officers are required to follow the instructions issued by the 3<sup>rd</sup> party Contracting Authority when procuring from this type of Framework Agreement. In doing so Officers will be required to use different legal terms, use price criteria other than 80% etc. There is no requirement to log any Exceptions to these Regulations as a result of this.

### **Setting-up a Framework Agreement**

- C5.5 If Officers decide that they (or their partners) are likely to need to buy the Works, Supplies or Services repetitively in the future but are unsure of exact quantities, it may be that the best way to buy them is by initially setting up a Council Framework Agreement.
- C5.6 Should a Framework Agreement need' to be procured please consult a Procurement Advisor. Refer to the Procurement Tool Kit for a description of a Framework Agreement.

## **C6 Approved Lists**

- C6.1 An approved (or select) register of suitably accredited and qualified providers vetted to the Council's standards and technical capability from

which Officers may seek for quotations or tenders without the need to advertise the procurement.

- C6.2 The establishment and maintenance of Approved Lists must be in accordance with advice from a Procurement Advisor.

## **C7 Concession Contracts**

- C7.1 Officers must use a Concession Contract if they want to enter into a contract which gives the provider the opportunity to operate a business for commercial gain.
- C7.2 Officers are to use these Regulations to procure Concessions Contracts unless the spend trigger given in the Threshold Ladder is triggered in which case the Concession Contracts Regulations shall apply.
- C7.3 Officers must get advice from a Procurement Advisor before carrying out any procurement relating to a Concession Contract.

## **C8 Procurement Tool Kit**

- C8.1 The Procurement Tool Kit is one of a suite of Procurement Instructions, and is an agreed set of standard documentation which is to be used for the preparation of a procurement (quotation or tender) and subsequent management of a Contract, for all Contract spends below those of the EU thresholds.
- C8.2 It is mandatory to use the Procurement Tool Kit for Council procurements. Any exception from this must be agreed by the Head of Commercial.
- C8.3 The standard documents that comprise the Procurement Tool Kit are to be tailored where indicated only. Officers must seek a Procurement Advisor's agreement regarding any other changes to the documents.

## **C9 Procurement / Purchasing Cards ('pCard')**

- C9.1 For the transaction spend levels indicated in the Threshold Ladder Officers can, where appropriate, use a pCard for both procuring and payment. Refer to the Council's Financial Regulations for more details.

## **C10 Community Right to Challenge**

- C10.1 The Community Right to Challenge means community organisations can submit to Local Authorities an expression of interest to run local services. This right is granted under the Localism Act 2016. If an expression of interest is accepted by the Council this may trigger a procurement exercise. Please consult a Procurement Advisor on receipt of any such public interest.

## **C11 Disposal of Council Assets**

- C11.1 Refer this to a Procurement Advisor.

## **C12 Insurance**

C12.1 Insurance conditions will be contained in the Contract terms and conditions. In terms of insurance, the Council will normally need the successful provider to have the following types and minimum limits of cover.

	<b>Works Contracts</b>	<b>Supplies and Services Contracts</b>
Public liability	£5 million	£5 million
Employers' liability	£10 million	£5 million
Professional indemnity	£5 million	£2 million

C12.2 The above limits relate to each and every claim. For public liability and employers' liability, the cover must be in place throughout the period covered by the Contract. For professional indemnity, the conditions are more complicated. Not only must the cover be in place throughout the period covered by the Contract but also for a further six years after the end of the Contract (or 12 years if the Contract is under seal). For certain types of Services, for example, financial advice, the amount of professional indemnity insurance cover will need to be higher to protect the Council in case anyone gives inappropriate advice.

C12.3 When providing Supplies or Services, the above limits may not be appropriate for small and medium enterprises ('SMEs') and sole providers. In these instances, the Council may be able to reduce these limits by applying for an Exception to these Regulations under section F.

C12.4 Where additional insurances are required, refer this to the Council's Head of Insurance for approval in the first instance.

## **D PROCUREMENT PROCESS**

### **D1 General**

D1.1 The Procurement Tool Kit further details the procurement process for seeking quotations and tenders under the EU Thresholds.

D1.2 Officers throughout the procurement must consider all other Council policies which could apply to the procurement project, e.g. The Strategic Plan, the Council's Financial Regulations, Business Plans, Delivery Plans, etc and legislative requirements such as (but not limited to) social value and equalities

### **D2 Sustainable Procurement (Social & Environmental Value)**

D2.1 Sustainable Procurement incorporates the achievement of environmental, economic and social outcomes through procurement processes. All, where relevant to the subject of the Contract, should be incorporated into every procurement process paying particular attention to the Council's published advice or Procurement Instructions for these areas.

D2.2 If in any doubt, Officers must seek the advice of a Procurement Advisor.

### **Social Value**

D2.3 Social value is the added value / benefit to the community as a result of the commissioning / procurement process, supporting the Council's vision of a connected Staffordshire, and maximising the benefits of public sector spend to local communities, engaging community spirit, in turn improving service delivery and quality.

D2.4 The Public Services (Social Value) Act 2012 mandates the Council to consider the wider benefits which may be achieved through the procurement of Contracts specific to Services with spends at, or over, the relevant EU Threshold.

D2.5 The Public Services (Social Value) Act further requires the Council to consider whether to consult on social value issues prior to undertaking a procurement exercise.

D2.6 Officers should demonstrate their consideration of social value for all other Contracts spends other than those in D2.4.

D2.7 The evaluation of social value should be considered as part of the non-priced (quality) aspect of the evaluation in all procurements.

### **Environmental Value**

D2.8 Environmental value focusses on the sustainable environmental considerations of a procurement. Please refer to the relevant Procurement Instruction.

## **D3 Employment issues and TUPE (Transfer of Undertaking Protection of Employment Regulations)**

D3.1 Implementing contractual arrangements can give rise to TUPE implications. It is not always obvious that there are TUPE implications; for example: -

- contracting with a new provider;
- outsourcing from in-house;
- bringing services back in-house

may invoke TUPE transfers.

D3.2 It is essential that Officers consider all TUPE implications prior to going out to procurement. Officers must seek the advice of a Procurement Advisor or a HR Advisor to ensure that any relevant TUPE arrangements have been considered.

D3.3 Contracts must contain relevant TUPE conditions to ensure all necessary practicalities for the application of TUPE are agreed and to safeguard the Council from risk (for example, to ensure that appropriate workforce (and

other) information will be made available by the incumbent provider prior to the Contract end date in sufficient time to allow the Council to fulfil TUPE obligations.

#### **D4 Advertising**

D4.1 It is mandatory that any public advert over the Council Advertising Threshold is placed on Contracts Finder by a Procurement Advisor.

#### **D5 Pre-Qualification**

D5.1 A separate pre-qualification stage is prohibited when publically tendering for Contracts with a value of less than the EU Threshold as set for Supplies/Services regardless of whether the subject matter of the Contract is Works, Supplies or Services.

#### **D6 Invitation to Tender ('ITT')**

D6.1 All below-EU Threshold ITTs shall use the agreed standard documentation as described in the Procurement Tool Kit.

#### **D7 Contract Terms and Conditions**

D7.1 It is essential that Officers consider the model Contract Terms and Conditions well in advance of going out to procurement.

D7.2 There must be written evidence for every Contract (regardless of value), and all Contracts must be in a form agreed with the Head of Commercial, i.e. all procurements must use the appropriate model Terms and Conditions and standard documentation available on the Councils web as the starting point. Where they are deemed insufficient, or require any deviation, this must be agreed by a Procurement Advisor or a Legal Advisor. Note – it is not an Exception to these Regulations to vary the Terms and Conditions.

D7.3 Purchase orders must reference / contain model Contract Terms and Conditions. A quotation and a purchase order will create a legally binding Contract. Please see paragraph D13.6.

D7.4 Officers are not permitted to enter into Contracts on the provider's Terms and Conditions for spends above the Council Advertising Threshold, and should take care that they do not inadvertently enter into a Contract on the provider's Terms and Conditions.

D7.5 It is accepted that Officers will contract on a provider's Terms and Conditions when using a Procurement / Purchasing Card.

D7.6 With the exception of D7.5 Officers should consider the use of model Council Contract Terms and Conditions below the Council Advertising Threshold although this is not mandatory.

D7.7 In the rare event that a provider refuses to accept the model Contract Terms and Conditions, the provider's Terms and Conditions are to be

referred to a Procurement Advisor or a Legal Advisor for review and possible approval.

D7.8 Advice on any Terms and Conditions must be sought from a Procurement Advisor or a Legal Advisor.

D7.9 The Head of Commercial must:

- keep a record or list of all model sets of Contract Terms and Conditions detailing when the conditions were last updated, who is responsible for updating them, and any changes to the models;
- keep all current model Contract Terms and Conditions under review;

## **D8 Issuing Requests, Receiving and Opening Quotations and Tenders**

D8.1 Where Officers receive only one or two quotations for procurements below the Council Advertising Threshold, Officers must report the exception in accordance with section F.

D8.2 Approval of a Procurement Advisor is required to abandon or terminate a procurement process (post advertisement) for Contract spends above the Council Advertising Threshold.

## **D9 Emailed Quotations**

D9.1 For procurements for Contracts with spends less than the Council Advertising Threshold, quotations shall be requested and received by the Council email system.

D9.2 Electronic quotations must:

- be received by Council email address; and
- have a date/ time of submission communicated to the recipients.

## **D10 Electronic Tendering and Auctions**

D10.1 All procurements at or above the Council Advertising Threshold must be conducted via the Council's electronic tendering system. All systems must, as a minimum, conform to the requirements stated in the Public Contracts Regulations. Third parties (see B1) must first seek approval from a Procurement Advisor to use an alternative electronic tendering system.

D10.2 Unless otherwise agreed by a Procurement Advisor, all electronic tendering for Contract spends above the Council Advertising Threshold will be performed by a Procurement Advisor.

D10.3 The Procurement Advisor (or agreed delegate) will manage the posting of the tender and manage the resulting clarifications only for electronic tendering performed for Contract spends at, and above, the Council Advertising Threshold. Officers shall prepare their tender in accordance with these Regulations and the Procurement Tool Kit.

D10.4 Approval from a Procurement Advisor is required to carry out an Electronic Reverse Auction.

## **D11 Late Tenders or Partial Receipt of Tenders**

D11.1 The Council will not accept a tender over the Council Advertising Threshold if it is received late and after Officers have opened other tenders for that Contract, unless the cause is either an act or omission of the Council.

D11.2 Any anomaly within the quotation process must be documented and authorisation to proceed sought in accordance with Exemptions (section F).

## **D12 Evaluating Quotations and Tenders**

D12.1 For procurements of Contracts with spend less than the Council Advertising Threshold, it is required that the quality aspect of the Specification will be evaluated under a pass / fail criteria and that price criteria will form 100% of evaluation.

D12.2 For procurements of Contracts with spend at, and above, the Council Advertising Threshold, it is required that the price criteria will be a minimum of 80% of evaluation.

D12.3 Where Officers wish to deviate from the stated price ratio above, Officers must obtain written authorisation to proceed in accordance with section F.

D12.4 Where the Procurement Tool Kit states a scoring formula for price and quality, an exception must be recorded (see section F) where an alternative formula is employed.

D12.5 For post-tender submissions, consult a Procurement Advisor where there is a requirement to deviate from prices initially received, or there is a need to deviate from the original Specification.

D12.6 Consult a Procurement Advisor for authority to accept a Variant Bid tender.

## **D13 Approval to Award Contracts for Works, Supplies or Services**

D13.1 For Contract awards with spends up to the Council Advertising Threshold Officers must obtain the approval of an Officer **Band C**.

D13.2 For Contract awards with spends at, and over, the Council Advertising Threshold and below the EU Threshold as set for Supplies/Services Officers must obtain the approval of an Officer **Band B**.

D13.3 For Contract awards with spends at, and over, the EU Thresholds as set for Supplies/Services Officers must obtain the approval of an Officer **Band A**.



D13.4 Any alternative solution to D13.3 for the approval of 'high' volumes of call-off contracts from a Framework Agreement must be presented by a **Band A Officer** to, and be agreed by, the Head of Commercial.

D13.5 Officers must ensure that a Contract award notice is issued by a Procurement Advisor on the Contracts Finder portal for Contracts with a value at and above the Council Advertising Threshold, together with a completed entry on the Contracts Register. For awards over EU Thresholds an OJEU award notice is also required.

### **Entering into Contract**

D13.6 The use of Offer and Acceptance and a valid Council purchase order will be used for all awards for Contract spends at and above £500, and under the Council Advertising Threshold, unless agreed by a Procurement Advisor or Legal Advisor.

D13.7 All awards over the Council Advertising Threshold will require the use of model Terms and Conditions. Consult a Procurement or Legal Advisor for advice on which Terms and Conditions will apply. The advice received will dictate whether the Contract is to be signed by the requisite Officer in accordance with banding in D13.1 to D13.3 or will require execution under seal.

D13.8 The authority to seal any Contract (the sealing authority) will also be in accordance with the Constitution, the Sub-Scheme of Delegation and the Officer banding in D13.1 to D13.3.

D13.9 Only an authorised officer of Strategy, Governance and Change shall execute Contracts under seal.

### **D14 Contract Monitoring and Management**

D14.1 Contracts awarded by or on behalf of the Council must be monitored and contract managed throughout the Contract term to ensure delivery of the Contracted Works, Supplies or Services in accordance with the Contract requirements and standards.

D14.2 Contract monitoring and management arrangements agreed during the procurement process will be determined by the complexity and risk associated with the Contract and conditions in the relevant market. Such arrangements must take account of both financial and quality aspects.

### **D15 Tender File**

D15.1 Officers should ensure that written auditable records of all procurement activity (quotation, tender and otherwise) are kept in electronic format on the Council ICT server system including electronically-scanned copies of any signed contract.

D15.2 Documentation shall be retained for a period stipulated in the Council's Records Retention and Disposal Policy.



## **D16 Transferring Contracts**

D16.1 In appropriate circumstances the Council may agree to transfer a Contract, by novation or assignment.

D16.2 Consult a Procurement Advisor prior to assigning or novating a Contract.

## **D17 Contract Variation, Extension and Termination**

D17.1 The approval to: -

- end a Contract early; or
- extend a Contract in line with its Terms and Conditions; or
- materially vary a Contract; or
- serve a default notice

shall be obtained from a **Band C** Officer where the Contract spend is less than the Council Advertising Threshold; or

shall be obtained from a **Band B** Officer where the Contract spend is at or more than the Council Advertising Threshold, and less than the EU Threshold as set for Supplies/Services; or

shall be obtained from a **Band A** Officer and a Procurement Advisor where the Contract spend is at, and above, the EU Threshold as set for Supplies/Services.

D17.2 The approval Officers in D17.1 shall inform a Procurement Advisor prior to fulfilling the action.

## **E Public Contracts Regulations / EU Procurement Directives**

E1.1 The Public Contracts Regulations are derived from the EU Public Contracts Directive, and came into effect in the UK on the 26<sup>th</sup> February 2015.

E1.2 Under the Public Contracts Regulations the Council is the Contracting Authority.

E1.3 A Procurement Advisor must be consulted, and must lead all procurements for Contract spends at, and above, the EU Thresholds.

E1.4 Officers must get agreement from the Head of Commercial as soon as possible before starting: -

- A competitive dialogue;
- A competitive procedure with negotiation;
- An innovation partnership procurement procedure;
- A negotiated procedure without prior publication (e.g. direct award);
- A Dynamic Purchasing System ('DPS').

E1.5 Any amendment to already-published selection or award criteria must be agreed by the Head of Commercial.

E1.6 For all procurements classified as falling under the Light Touch Regime consult a Procurement Advisor.

## **F Exemptions and Exceptions**

### **F1 General**

F1.1 Exemptions fit into the following categories: -

1. Circumstances where these Regulations do not apply;
2. Exemption from these Regulations for Contract spends up to the EU Thresholds.

### **F2 Exemptions - Circumstances where these Regulations do not apply**

F2.1 These Regulations do not apply to the following: -

1. Contracts of employment;
2. Contracts relating to interest in land (also known as property) – see a Procurement Advisor first;
3. Contracts entered into by schools using delegated budgets as they have their own Regulations to follow;
4. Investment transactions placed by the Director of Finance and Resources for treasury management activities;
5. Contracts placed by the Director of Finance and Resources investing money or assets of the Staffordshire County Pension Fund;
6. Grants which the Council may receive or make (unless the grant is part of a Contract for Services or mandates that these Regulations are to be followed);
7. When buying from within the Council;
8. In instances where the Works, Supplies or Services can be bought from only one provider and this can be justified. Consult a Procurement Advisor in this instance;
9. In instances where Officers are buying works of art, museum artefacts, manuscripts or archive collection items

### **F3 Exceptions from these Regulations for Contract spends up to the EU Thresholds**

F3.1 Any Works, Supplies or Services Contract or process declared to be an exception from these Regulations must be authorised, in writing, as follows: -

- by a **Band B** Officer for Contract spends up to Council Advertising Threshold;
- by a **Band A** Officer where the Contract spend is at, or above, the Council Advertising Threshold and below the EU Threshold as set for Supplies/Services;

#### F3.2 Examples of Exceptions: -

- where an immediate need is created by a sudden, unforeseen, real and demonstrable emergency or danger to life or health that requires immediate action to protect the interests of the Council;
- receiving only 1 quotation when 3 were sought;
- adjusting the level of insurances when seeking SME providers;
- when detracting from an 80% price evaluation criteria;

#### F3.3 Examples of what are not considered as Exceptions: -

- when required to vary, or use legal terms other than, the model Terms and Conditions;
- where 3<sup>rd</sup> party Framework Agreements dictate the procurement rules to be used;

### **F4 Non-Compliance of the Public Contracts Regulations and Concession Contracts Regulations**

F4.1 No Officer may grant an exception to procurements regulated by the Public Contracts Regulations or the Concession Contracts Regulations.

F4.2 Any risk of potential non-compliance of the Public Contracts Regulations or the Concession Contracts Regulations must be reported to the Council full Senior Leadership Team.

### **F5 Applying for / Authorising and Reporting an Exception**

F5.1 All applications and subsequent authorisations for exceptions must be in writing and recorded.

F5.2 All authorised exceptions as described in F3.1 shall be copied to a Procurement Advisor for approval, and shall contain, as a minimum, the following: -

- Description of exception / background
- Justification for the exception
- Whether it's an ongoing or it's a new spend
- Date of commencement if resulting in a Contract
- Duration of any subsequent Contract
- Commissioner of the Council service
- Band sign-off name and post

### **F6 Recording / Reviewing of Exceptions**

- F6.1 The Head of Commercial will keep a register of all exceptions to these Regulations.
- F6.2 It is the responsibility of the originating Officer of the Exception to ensure that it is reviewed and remains valid. The originating Officer is to seek further approvals where necessary.

## Annex 1 - Glossary of Terms

Band A	is a representative of a member of the Councils <b><u>'FULL'</u></b> Senior Leadership Team.
Band B	is an Officer who reports direct to a Band A.
Band C	is an Officer who reports direct to a Band B.
Central Purchasing Body	is a Contracting Authority in its own right that concludes pre-procured contracts for Works, Supplies or Services and allows access to these contracts by the wider public sector.
Commercial Team	is a Council department within the Finance and Resources Directorate whom undertake all activities within a typical procurement/commissioning cycle activity on behalf of the Council and partner organisations.
Concession Contract	is a Contract between a company and the Council that gives the company the right to operate (and profit from) a specific business within the Councils jurisdiction, subject to certain conditions.
Concession Contracts Regulations	came into force on 18 <sup>th</sup> April 2016 for the regulation of certain service and works concession contracts (see Threshold Ladder) where consideration given to the provider is that the provider is permitted to exploit the Works or Services that are the subject of the contract (together with payment if desired).
Constitution	is the Councils document that contains the rules and procedures for making decisions and managing the Councils business.
Contract	is, for the purposes of these Regulations, any agreement (whether in writing or not) between the Council and one or more other parties in respect of the acquisition or sale of Works, Supplies or Services for payment or otherwise.  Throughout these Regulations, also read 'Contract' in context of a framework agreement.
Contracting Authority	is a defined term in the Public Contracts Regulations means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law, and includes central government authorities. Staffordshire County Council is a Contracting Authority.
Contracts Finder	is the Government's online procurement portal for both providers and Contracting Authorities. For the former it presents new procurement opportunities; for the latter it is

	the mandatory portal to advertise their new opportunities and contract award information.
Contracts Register	is the list of Contracts entered into by the Council over a value of £25,000. This is held by the Head of Commercial and maintained by Officers.
Council	means Staffordshire County Council.
Council Advertising Threshold	is the lowest contract spend trigger at which a procurement is advertised to the public. See Threshold Ladder.
Default Notice	is used to provide written notice that a provider is in breach of contract.
Electronic Reverse Auction	is the ability to compete providers in a 'live' situation(via specialised software) with the intention of reducing initially tendered prices.
EU Threshold	are the contract (spend) triggers that will apply to public procurement exercises run under the Public Contracts Regulations, and the Concession Contracts Regulations.
Exceptions	are where these Regulations, in whole or in part, are not followed as presented, unless otherwise indicated.
Framework Agreement	is an agreement or other arrangement which sets the Terms and Conditions (in particular the price and, where appropriate, quality) under which the provider will enter into one or more (call-off) contracts with the Council. This may also be referred to as a call-off contract, a continuous contract or a standing offer.
Head of Commercial	is the Council's Head of the Commercial Team.
HR Advisor	is an Officer allocated by the Head of HR.
Invitation to Tender	is a document which invites providers to bid for the provision of Works, Supplies or Services.
Key Influencer	is an Officer within a procurement project who, by virtue of their normal duties in that project, could influence the choice of provider.
Legal Advisor	is an Officer allocated by the Head of Law.
Light Touch Regime	Contracts for health, social, prison, postal, certain legal services and other community services, which effectively replaced the previous Part B services in historic Public Contracts Regulations.

Monitoring Officer	a designated Officer of the Council with the unique role to ensure that the Council, its Officers and Elected Councillors maintain the highest standards in all they do.
Offer and Acceptance	is the process of awarding a Contract which is usually conducted without signature.
Officer	is any employee of the Council and also Members.
OJEU	is the Official Journal of the European Union, which publishes all public sector tenders which have Contract spends over the EU Thresholds.
Pre-Qualification	is the stage used to assess providers for inclusion in the shortlist of providers who will be invited to submit a final tender. They specifically evaluate the suitability of potential providers in relation to their technical knowledge and experience, capability and financial and economic standing.
Procurement Advisor	is an Officer allocated by the Head of Commercial.
Procurement / Purchasing Card	The 'pCard' is an efficient means of ordering and paying using a bespoke credit card issued by the Council. Refer to Staffordshire County Council's Financial Regulations for more details.
Procurement Instructions	issued separately, are technical procurement instructions which are enabled by, and underpin, these Regulations. The Procurement Tool Kit is an example of a Procurement Instruction.
Procurement Tool Kit	is a particular Procurement Instruction which outlines the processes and considerations involved in compiling a quotation and tender for contract spends below the EU Thresholds.
Public Contracts Regulations	came into force on 26 <sup>th</sup> February 2015 and directly implement the 2014 EU Public Sector Procurement Directive together with some UK reforms aimed to make public procurement more accessible to small businesses.
Quotation	is a request for price and any other relevant matter without the formal issue of a public tender, for Contract spends less than the Council Advertising Threshold.
Regulations	are the Council's Procurement Regulations and are the Council's own internal governance and policy to public procurement.
Senior Leadership Team ('SLT')	Council Officers appointed under Article 12 of the Constitution, led by the Chief Executive, to carry out the duties shown in these Regulations.

Services	in their purest form, are not Supplies or Works, although they may form part of these. Services are all encompassing and include all actions, both tangible and intangible.
Sourcing Strategy	is the written justification of the options considered, dismissed and ultimately decided upon when implementing a specific procurement process. See the Procurement Tool Kit.
SME	Small and Medium-sized Enterprises.
Specification	is the descriptive document(s) detailing the requirements required from the provider in delivering the Works, Supplies or Services.
Supplies	are stock items or amounts, usually tangible, of something supplied or available for use.
Tender	is a provider's tender response to the Invitation to Tender.
Terms and Conditions	means the Council's standard model sets of legal terms and conditions (as may be amended from time to time). Refer to the Procurement Tool Kit for details.
Threshold Ladder	the Council's agreed procurement processes outlined at various Contract value spend triggers/thresholds.
Transparency Code	issued in 2015, the Local Government Transparency Code mandates the Council to publish various spend data, and in particular specific procurement-related information.
Variant Bid	is a tender which technically meets the Specification, but delivers the solution by a different means from that specifically requested by the Contracting Authority in the Tender.
Works	<p>is the subject matter of a Contract which is ordinarily property construction and civil engineering related. A list of defined Works categories is shown in Schedule 2 of the Public Contracts Regulations.</p> <p>The Council may also treat 'Works' as an agreement where a developer constructs a building on their own land (according to Council needs) and then transfers the land and structure to the Council at a later date. Refer these projects to a Procurement Advisor in the first instance.</p>